

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

“All Cases”

MDL No.: 2804

Case No.: 17-md-2804

Judge Dan Aaron Polster

**DECLARATION OF FRANCES TUCKER, ESQ. IN SUPPORT OF KROGER’S
OBJECTION TO SPECIAL MASTER COHEN’S DISCOVERY RULING NO. 14, PART
32 REGARDING KROGER’S PRIVILEGE CLAIMS**

Pursuant to 28 U.S.C. § 1746, I, Frances Tucker, hereby declare under penalty of perjury and state as follows:

1. I am a Senior Counsel at The Kroger Co. (“Kroger”) and have held my current position since August 2021. I have worked as a lawyer in Kroger’s in-house legal department since 2003.
2. Given the highly regulated environment in which Kroger’s pharmacy business segment operates, Kroger’s in-house legal department often seeks advice from our outside counsel regarding regulatory compliance matters.
3. Kroger’s in-house legal department retained Quarles & Brady, LLP (“Quarles & Brady”) in or around the Spring of 2012 as outside counsel in this matter.
4. Larry Cote was the lead Quarles & Brady partner on the matter. A biography with his credentials is attached hereto as **Exhibit A**.
5. Kroger’s in-house legal department directed Quarles & Brady to provide legal advice and assist in the development of an action plan to ensure that Kroger remained in compliance with Drug Enforcement Agency (“DEA”) regulations and did not become the target

of an investigation. Specifically, Kroger's in-house legal department directed Quarles & Brady to review Kroger's controlled substance policies and procedures, and provide an analysis of Kroger's compliance with the DEA's suspicious order monitoring ("SOM") regulations.

6. Quarles & Brady advised Kroger's in-house legal department that engaging an outside consultant to conduct an investigation of certain aspects of Kroger's controlled substance compliance program would aid Quarles & Brady in providing legal advice to Kroger.

7. In late 2012, upon Quarles & Brady's advice, Kroger's in-house legal department began to engage in discussions with an outside consultant, BuzzeoPDMA ("Buzzeo"), to investigate and assess Kroger's SOM program, given their expertise in, among other things, the policies of the DEA, the requirements of the Controlled Substances Act ("CSA"), federal implementing regulations, as well as state law across the country. Quarles & Brady advised that such an assessment would aid it in providing Kroger with legal advice regarding compliance with DEA regulations.

8. Kroger's in-house legal department ultimately retained Buzzeo in January 2013 to perform an onsite review and assessment of Kroger's current SOM system at two pharmacies and one distribution facility. Kroger's in-house legal department also directed Buzzeo to review Kroger's policies and procedures, as well as interview Kroger's employees, to investigate Kroger's SOM system and compliance with DEA regulations. Kroger's in-house legal department directed Buzzeo to, among other things, generate a report that included recommendations regarding Kroger's SOM system, leveraging Buzzeo's extensive DEA and SOM knowledge.

9. The primary purpose of Buzzeo's assessment was to provide Kroger's outside and in-house counsel with information necessary to facilitate the provision of legal advice to Kroger regarding compliance with DEA regulations.

10. Paul Heldman, Kroger's General Counsel at the time, executed the agreement.

11. In March of 2013, Buzzeo issued reports ("Q&B Reports") relating to its onsite assessment of (i) two Kroger pharmacies, and (ii) one distribution facility. I advised my colleagues that the Q&B Reports were privileged and should not be provided to any third party. I understood that the Q&B Reports were to remain confidential at all times.

12. As stated in the Q&B Reports, they contain Buzzeo's observations, analysis, and recommendations based on the information provided to Buzzeo and individuals Buzzeo interviewed. As further stated in the Q&B Reports, Buzzeo's opinions and recommendations for the continued improvement of Kroger's diversion prevention programs and compliance with applicable federal regulations represented its best professional judgment based on its knowledge of the CSA, the implementing regulations, and Buzzeo's experience with them. Those statements are consistent with my understanding of Buzzeo's scope of work.


13. The Q&B Reports are addressed exclusively to Kroger's outside counsel, Quarles & Brady. Once finalized, Buzzeo e-mailed the Q&B Reports to Mr. Larry Cote only. Each page of the Q&B Reports bears an "Attorney-Client Privilege" watermark.

14. Mr. Cote then e-mailed the Q&B Reports to me under the "Attorney-Client Privilege" banner, and provided me with his initial legal impressions of the reports.

15. I then e-mailed the Q&B Reports to Kroger's senior management, also under the "Attorney-Client Privilege" banner. I provided Kroger's senior management with my own initial legal impressions of the reports. I cautioned that the information was not for wide dissemination and should not be provided to a third party of any kind.

16. Over time, the Q&B Reports assisted me and Quarles & Brady in providing legal advice to Kroger's business personnel regarding compliance with DEA regulations.

Dated: May 10, 2023
Cincinnati, Ohio



Frances Tucker, Esq.